TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~355~~. 153

THE EASTERN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

GEORGE W. KEENE, J. B. LAMPER, H. F. BREED, B. F. DOCK, 2D, JOSEPH DAVIS, 2D, W. A. BROWN, B. F. SPINNEY, J. G. BROWN, JEROME INGALLS, ET AL.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

FILED DECEMBER 8, 1870.

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COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

[SEAL.] At the supreme judicial court, begun and holden at Boston, within and for the county of Suffolk, on the first Tuesday of October, being the fourth day of said month, in the year of our Lord one thousand eight hundred and seventy—

George W. Keene and others, petitioners in a petition in the words following, to wit:

To the justices of the supreme judicial court within and for the county of Suffolk:

Respectfully represent the undersigned, being more than twenty-five legal voters in the city of Lynn, in the county of Essex, that, in and by the three hundred and forty-eighth chapter of the statutes of this Commonwealth, passed in the year eighteen hundred and sixty-eight, the Eastern Railroad Company, a corporation organized under the laws of this Commonwealth, having a usual place of business in Boston, in said county of Suffolk, was required to erect a new station-house, and to maintain the same on said railroad, at the central station on Central square in said Lynn, of a kind and description set forth in said statute, and was authorized to take such land as might be necessary for said purpose; and that, in said act, it was furthermore provided that,

2 in case of the neglect or failure of said corporation to erect such station-house as provided in said act, within six months from the passage of the same, the supreme judicial court should have power, upon application of any twenty-five legal voters of said city of Lynn, to appoint three commissioners at the expense of said corporation to decide all questions relating to the erection of said station-house that might arise between the parties, and should have power to pass orders suitable to compel a specific performance on the part of said corporation of the requirements of said act.

And the petitioners farther represent that said act was approved by the governor, and took effect as a law on the eleventh day of June, in the year eighteen hundred and sixty-eight, and that, for six months thereafter and up to the date of this petition, said corporation have wholly failed and neglected to erect a station-house or to do any other acts as therein required, but have wholly refused, and do still refuse so to do, although often requested so to do.

Wherefore your petitioners pray that three commissioners may be appointed at the expense of said corporation with instructions to hear the parties and to decide all questions relating to the erection of said station-house that may arise between the parties, and that such orders may be passed as may be suitable, to compel a specific perform-

3 ance, by said corporation, of the requirements of said act, and for such other relief in the premises as may be just and proper.

December 12, 1868.

GEO. W. KEENE.	W. S. BOYCE.	PHILIP P. TAPLEY.
J. B. LAMPER.	NATHAN BREED.	AMOS P. TAPLEY.
H. F. BREED.	J. C. BACHELLER.	S. B. PRATT.
BENJ. F. DOAK, 2D.	W. BASSINS.	EDWIN SHELDON.
JOSEPH DAVIS, 2D.	PHILIP A. CHASE.	JOSHUA P. EATON.
W'M A. BROWN.	A. T. GOODWIN.	S. D. BROWN.
B. F. SPINNEY.	W. N. MELCHER.	D. F. CHASE.
JO'S G. BROWN.	ISAAC NEWHALL.	JOHN M. NEWHALL.
JEROME INGALLS.	S. S. IRESON.	D. C. BUFFUM.
J. M. ATWILL.	LEWIS G. SWETT.	W. P. BREED.
C. F. COFFIN.	THOMAS B. KNIGHT.	

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme judicial court. October term, 1868.

On the foregoing petition it is ordered that the petitioners give notice to the said Eastern Railroad Company to appear before the justices of this court to be holden at Boston, within and for said county of Suffolk, on the first Monday of February next, that they may then and there shew cause why the prayer of said petition should not be granted.

By the court.

GEO. C. WILDE, *Clerk.*

JAN. 16, 1869.

4 This petition was entered in the said supreme judicial court at the October term thereof, in the year eighteen hundred and sixty-eight, when and where the petitioners appeared; and in pursuance of said order of the court the respondents also appeared, and the petition was continued unto the April term, eighteen hundred and sixty-nine, when the defendants filed their answer, as follows:

The defendants answer & aver that they were incorporated by an act of the legislature of said Commonwealth, passed in the year A. D. 1836, entitled an act to establish the Eastern Railroad Company, a copy of which act is hereto annexed, marked A, & made part of this answer, wherein & whereby said defendants were made a corporation, with all the powers & privileges, and subject to all the duties, liabilities, & provisions contained in that part of the 89th chapter of the Revised Statutes of said Commonwealth, which relates to railroad corporations, & in the 44th chapter of said Revised Statutes. And said defendants aver that they were duly organized under & by virtue of said charter, and proceeded to build a railroad under the same, & such acts as have been subsequently passed in addition thereto, & have expended about six millions of dollars therein, and do now maintain and operate said railroad, & run cars thereupon in accordance with said charter,
5 & the acts in addition as aforesaid, all of which are public statutes, & may be pleaded & referred to as such.

And said defendants admit that the legislature of said Commonwealth enacted the statute set up and relied upon in the complainant's bill, being the 348th chapter of the acts of the year eighteen hundred & sixty-eight.

And these defendants admit that they have not, since the passage of said act, erected a new station-house at the central station, in said Lynn, as prescribed in said act.

And these defendants say and aver that said act, namely, chapter 348 of the acts of the year 1868, did not, nor could it impose any duty or create any liability upon them, and that the said act is wholly inoperative, ineffectual, and void, because said act is in violation & contravention of so much of the tenth section of the first article of the Constitution of the United States as provides that, "No State shall pass any law impairing the obligation of contracts," and of so much of the fifth article of the amendments thereto as provides that "Private property shall not be taken for public use without just compensation;" and, also, that said act is repugnant to so much of the constitution of the Commonwealth of Massachusetts as provides that, "No part of the property of any individual can, with justice, be taken from him, or applied to public uses without his own consent or that of the

6 representative body of the people," and that, "Whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor;" and because said act is also repugnant to other provisions of said constitution, and is unreasonable, inoperative, & void; and is also vague, uncertain, and incapable of being carried out or enforced; and, also, that said act was passed without any previous notice to these defendants, and without any opportunity being afforded them to be heard in reference thereto, the circumstances in reference thereto being as follows, namely, upon a petition to the legislature for the removal of the West Lynn station to Market street, the legislative committee, after a regular hearing, reported adversely; and when said report came before the Senate for its action thereon, this act was introduced as an amendment to said report, and was passed, and the defendants had no notice of its intended introduction.

And the defendants further say that they have never accepted, or in any way assented to said act.

And they further say that, by the charter aforesaid, & the acceptance thereof by these defendants, & their action under it, a contract was made and entered into by and between them and the said Commonwealth, the obligation whereof the said act of the legislature
7 of Massachusetts, in said bill referred to, so far as the same extends, would unlawfully impair.

And said defendants further say that, by the 49th section of the 39th chapter of the Revised Statutes of Massachusetts, it is stipulated and enacted that "the immediate government and direction of every such corporation shall be vested in a board of directors;" and by the 83rd section of the same chapter it is stipulated and enacted "that every such corporation may establish for their sole benefit a toll upon all passengers & property conveyed or transported on their railroads at such rates as may be determined by the directors of the corporation, & may from time to time regulate such conveyance & transportation, the weights of loads, & all other things in relation to the use of such road as the directors may determine;" and that upon the faith of the charter granting to them the privileges set forth above, and of the above stipulations and enactments, the defendants have expended a large sum of money, namely, the sum of six millions of dollars in the construction and equipment of their railroad; and they aver that the act aforesaid, being chapter 348 of the acts of the year 1868, is in derogation of the rights and privileges granted to them by their charter & said Revised Statutes, & in violation of the contract created by the enactment of said charter & statutes, & so is wholly inoperative & void.

8 And these defendants further answer & say that the said petitioners have no lawful right to institute said petition, & that the said supreme judicial court have no jurisdiction or authority under said acts or otherwise in the premises; and also that the prayer of said complainants' petition is contrary to law, equity, & justice, and ought not to be granted.

Wherefore they pray that said petition may be dismissed, & that they may be discharged hence, with their reasonable costs.

By ELIAS MERWIN,
Their Att'y.

Thereupon the petition was continued unto the October term, eighteen hundred and sixty-nine, when the following agreement was filed:

SUFFOLK, *ss*:

Supreme judicial court. Oct. term, 1869.

GEO. W. KEENE ET AL.
v.
THE EASTERN RAILROAD CO.

It is agreed that said case may be reserved for hearing by the full court upon the petition and answer, with like effect as if the same were a bill and answer in equity.

CHANDLER, SHATTUCK & THAYER,
For Pl'ffs.

ELIAS MERWIN,
For Def'ts.

At chambers, in Boston, November 8th, 1869, ordered that the case be reserved, according to the above agreement.

HORACE GRAY, JR.,
Justice.

9 And the case was continued unto the April term, eighteen hundred and seventy, when it was ordered by the supreme judicial court for the Commonwealth, by its rescript, as follows:

COMMONWEALTH OF MASSACHUSETTS:

Supreme judicial court for the Commonwealth, at Boston, January term, 1870.

In the case of George W. Keene & al., petitioners, vs. The Eastern Railroad, pending in the supreme judicial court for the county of Suffolk,

Ordered, That the clerk of said court in said county make the following entry under said case in the docket of said court, viz:

Prayer of petition granted; commissioners to be appointed according to St. 1868, c. 348.

By the court.

GEO. C. WILDE, *Clerk.*

AUGUST 31, 1870.

Brief statement of the grounds and reasons of the decision.

The statute is constitutional and valid for reasons stated in the opinion in Com'th v. Eastern R. R. Co.

10 And the case was continued unto the present term.

And now it is ordered by the court that Darwin E. Ware and Robert Johnson, of Boston, and William Schouler, of Lynn, be appointed commissioners, as prayed for in the petition of the plaintiffs; and the said commissioners are directed to meet and hear the parties, and to decide all questions that may arise between them relating to the building of a station house on the railroad of the defendants at the central station or Central square in the city of Lynn, as required by the Statute 1868, ch. 348; and to make report of their doings to the court as soon as may be.

By the court.

GEO. C. WILDE, *Clerk.*

OCTOBER 19, 1870.

Whereupon the following certificate is filed of record:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

Supreme judicial court.

GEORGE W. KEENE & AL., PETITIONERS,
vs.
THE EASTERN RAILROAD COMPANY.

11 I hereby certify that, in the determination of this suit, there was necessarily drawn in question the construction of that clause of the Constitution of the United States which prohibits a State from passing a law impairing the obligation of a contract, and that the decision was against the right claimed by The Eastern Railroad Company, the respondent in said suit, and was necessary to the adjudication of the cause.

REUBEN A. CHAPMAN,
Ch. Justice S. J. C.

OCTOBER 28, 1870.

And the following supersedeas was issued:

SUPREME J. COURT, *Suffolk, ss:*

At chambers, Boston, Oct. 31, 1870.

GEO. W. KEENE ET AL., PET'RS,
v.
EASTERN R. R. CO'Y.

Supersedeas.

It now appearing to the court that a writ of error, sued out by the said Eastern Railroad Company from the Supreme Court of the United States to correct the alleged error in the final decree of this court, made and entered on the nineteenth day of October, A. D. 1870, whereby Messrs. Darwin E. Ware, Robert Johnson, & William Schouler were appointed commissioners, as prayed for in the petition of said petitioners, was duly filed and allowed on the twenty-eighth day of said October, & a copy thereof was on the same day duly filed in the
12 clerk's office of the supreme judicial court for this county for the use of said defendants in error; and whereas by force of the statute of the United States of America in that behalf made, the said writ of error is a supersedeas and stay of all further proceedings under said decree until the final judgment of the Supreme Court of the United States upon said writ of error—it is now ordered that no further proceedings be had, & the said commissioners are hereby enjoined to take no further action under said decree until the further order of this court.

By the order of Seth Ames, esq., one of the justices of said court.

GEO. W. NICHOLS, *Ass't Clerk.*

BOSTON, *Nov. 2d*, 1870.

SUFFOLK, *ss:*

I this day gave in hand to the within-named Darwin E. Ware an attested copy of this writ.

BENJ. F. BAYLEY, *Dep'y Sheriff.*

Service & travel, .58; copy & stamps, 1.05—1.63.

13 Know all men by these presents that we, The Eastern Railroad Company as principal, and Franklin Haven & Benj. E. Bates, of

Boston, county of Suffolk, as sureties, are held and firmly bound unto George W. Keene, of Lynn, in said State, and his associates, in the petition of said Keene & others against The Eastern Railroad Company, in the suit hereinafter mentioned, in the full and just sum of ten thousand dollars, to be paid to the said George W. Keene and his said associates, their executors, administrators, and assigns; to which payment, well and truly to be made, we bind urselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals, and dated this twenty-seventh day of October, A. D. eighteen huudred and seventy.

Whereas, lately at a term of the supreme judicial court for the county of Suffolk and State of Massachusetts, namely, on the niueteenth day of October, A. D. 1870, in a suit depending in said court between the said George W. Keene and associates as petitioners, and the said Eastern Railroad Company as defendant, a final decree was rendered against the said Company, and the said Company having obtained from the Supreme Court of the United States a writ of error, and filed a copy thereof in the clerk's office of the said supreme judicial court to reverse the decree in the aforesaid suit, and a citation directed to the said George W.
14 Keene and associates, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Eastern Railroad Company shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

EASTERN RAILROAD COMPANY,
[SEAL.] By GEORGE M. BROWNE, *President.*
FRANKLIN HAVEN. [& A SEAL.]
B. E. BATES. [& A SEAL.]

Sealed and delivered in presence of—
Witness: W. H. WADLEIGH.

Approved by—

R. A. CHAPMAN, *Ch. J. S. J. C.*

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the supreme judicial court of Massachusetts for said county of Suffolk.

Attest: GEO. C. WILDE, *Clerk.*

15 The United States of America to George W. Keene, J. B. Lamper, H. F. Breed, Benj. F. Dock, 2nd, Joseph Davis, William A. Brown, B. F. Spinney, Jos. G. Brown, Jerome Ingalls, J. M. Atwill, C F. Coffin, W. S. Boyce, Nathan Breed, J. C. Bacheller, W. Bassett, Phillip A. Chase, A. T. Goodwin, W. N. Melcher, Isaac Newhall, S. S. Ireson, Lewis G. Swett, Tho's B. Knight, Phillip P. Tapley, Amos P. Tapley, S. B. Pratt, Edwin Sheldon, Joshua P. Eaton, S. D. Brown, D. F. Chase, John M. Newhall, D. O. Buffum, W. F. Breed, all of Lynn, in said district of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme judicial court for the county of Suffolk and State

of Massachusetts, wherein The Eastern Railroad Company, a corporation existing in said State, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. A. Chapman, chief justice of the supreme judicial court of the State of Massachusetts, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and seventy.

REUBEN A. CHAPMAN.

16 DISTRICT OF MASSACHUSETTS,
County of Suffolk, ss:

On this twenty-eighth day of October, A. D. 1870, personally appeared before me, the subscriber, Benjamin F. Bayley, deputy sheriff, and made oath that he served the within citation by delivering a true copy thereof to Messrs. Chandler, Thayer & Hudson, the attorn*ies* of the said George W. Keene and others, the said defendants in error.

ELIAS MERWIN,
U. S. Com'ss'r & Jus. Peace for County of Suffolk.

OCTOBER 28*th*, A. D., 1870.

STATE OF MASSACHUSETTS,
County of Suffolk:

I hereby certify that, on this day, I delivered in hand to Messrs. Chandler, Thayer & Hudson, the attorn*ies* of record of the said George W. Keene & others, the said defendants in error, a true copy of the within citation.

BENJ. F. BAYLEY,
Dep. Sheriff.

Fees, $1 00.

OCT. 29, A. D. 1870.

STATE OF MASSACHUSETTS:

This certifies that service of the within citation has been duly accepted in behalf of all of said defendants in error.

CHANDLER, THAYER & HUDSON,
Attorneys for Defendants in Error.

(Indorsed:) 478. Eastern R. R. Co'y, pl'f in error, vs. George W. Keene & als. Citation. Filed Oct. 29, 1870. Att.: Geo. W. Nichols, ass't clerk.

17 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme judicial court of the Commonwealth of Massachusetts, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between George W. Keene, J. B. Lamper, H. F. Breed, Benj. F. Dock, 2nd, Joseph Davis, 2nd, William A. Brown, B. F. Spinney, Jos. G. Brown, Jerome Ingalls, J. M. Atwill, C. F. Coffin, W. S. Boyce, Nathan Breed, J. C. Bacheller, W. Bassett, Phillip A. Chase, A. T. Goodwin, W. N. Melcher, Isaac Newhall, S. S. Ireson, Lewis G. Swett, Thomas B. Knight, Philip P. Tapley, Amos P. Tapley, S. B. Pratt, Edwin Sheldon, Joshua P. Eaton,

S. D. Brown, D. F. Chase, John M. Newhall, D. O. Buffum, & W. F. Breed, are petitioners, plaintiffs, and The Eastern Railroad Company, a corporation, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Eastern Railroad Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] JOHN G. STETSON,
Clerk of the Circuit Court of the United States.

Allowed by—

R. A. CHAPMAN,
Ch. J. S. J. C.

18 COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

And now the judges of the supreme judicial court of said Commonwealth make return of this writ, by annexing hereto and sending herewith, under the seal of said court, as within commanded, a true and attested copy of the record and process in the suit within mentioned, and of all papers filed therein, and of all proceedings therein, and the original citation, with service endorsed thereon, and the bond to prosecute the writ of error.

In testimony whereof I, George C. Wilde, clerk of said court, within and for said county of Suffolk, have hereunto set my hand and the seal of said court, this twenty-ninth day of November, in the year of our Lord eighteen hundred and seventy.

[SEAL.] GEO. C. WILDE, *Clerk.*

(Indorsed:) Eastern R. R. Co'y, pl'f in error, vs. George W. Keene & al. Writ of error. Filed Oct. 28, 1870. Att.: Geo. W. Nichols, ass't clerk. And the return.

(Indorsement on cover:) No. 355. The Eastern Railroad Company, plaintiff in error, vs. George W. Keene & al. Massachusetts supreme judicial court. Filed 8th December, 1870.